United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

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Court of Appeals, District of Columbia

APRIL TERM, 1905.

359

No. 1551.

MORGAN BRYAN, TRUSTEE IN BANKRUPTCY, APPELLANT,

vs.

ALICE V. CURTIS, ADMINISTRATRIX OF THE ESTATE OF WILLIAM R. CURTIS, AND LESLIE M. SHAW, SECRETARY OF THE TREASURY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED MAY 10, 1905.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

APRIL TERM, 1905.

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MORGAN BRYAN, TRUSTEE IN BANKRUPTCY, APPELLANT,

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APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 12, 1905.

In the Court of Appeals of the District of Columbia.

MORGAN BRYAN, Trustee in Bankruptcy, Appellant,
vs.
ALICE V. CURTIS, Administratrix, &c., ET AL. } No. 1551.

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a Supreme Court of the District of Columbia.

MORGAN BRYAN, Trustee in Bankruptcy, Complainant,
vs.
ALICE V. CURTIS, Administratrix of the Estate of William R. Curtis, and Leslie M. Shaw, Secretary of the Treasury, Defendants. } No. 24697. In Equity.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1 *Bill of Complaint.*

Filed May 31, 1904.

In the Supreme Court of the District of Columbia.

MORGAN BRYAN, Trustee in Bankruptcy,
vs.
ALICE V. CURTIS, Administratrix of the Estate of William R. Curtis, and Leslie M. Shaw, Secretary of the Treasury. } Equity. No. 24697.

To the supreme court of the District of Columbia, holding an equity court:

Your complainant, Morgan Bryan, respectfully states as follows:

1. That he is a citizen of the United States and a resident of the State of Texas, and files this suit as trustee in bankruptcy of the estate of William R. Curtis, as hereinafter set forth.

2. That Alice V. Curtis is sued as the administratrix of the estate of William R. Curtis, in relation to a certain fund realized from certain claims heretofore filed in the Court of Claims upon the petition of said William R. Curtis. The said Leslie M. Shaw is sued as Secretary of the Treasury, who has in his possession the funds necessary to pay the claim of said Alice V. Curtis, administratrix as aforesaid, said funds having been appropriated for that purpose by act of Congress, as hereinafter set forth.

2 3. This complainant further avers that on the 15th day of August, 1893, the said William R. Curtis, now deceased, filed in the Court of Claims of the United States two certain claims against the United States and the Comanche Indians, for depredations committed during the years 1870 and 1874 by said Indians, consisting of the running off and appropriation by them of certain cattle and horses alleged to have belonged to said William R. Curtis, and owned by said William R. Curtis in the State of Texas, said claims being numbered 9722 and 9722*a*, and were filed under and by virtue of an act of Congress approved March 3, 1893. Complainant further avers that thereafter, to wit, on February 24, 1902, the said Alice V. Curtis, administratrix of the estate of said William R. Curtis, was substituted as claimant in said cases pending in the Court of Claims, upon her petition and showing that the original petitioner, William R. Curtis, had died intestate, and that she had been duly appointed and qualified as his administratrix.

4. Complainant further avers that on March 29, 1902, and April 2, 1902, intervening petitions were filed in said causes on behalf of the heirs-at-law and personal representatives of one James C. Curtis, setting forth that the said James C. Curtis was a brother and partner of said William R. Curtis at the time of said Indian depredations and was entitled to one-half of whatever judgments might be entered by said court on behalf of said claimant, and said intervening petitioners were permitted to become parties claimant in said cause. Complainant further avers that such proceedings were had in said two causes before the Court of Claims that on Feb-

3 ruary 24, 1904, judgment was entered for the claimant in case 9722 for $8,615.00, less the sum of $1,723.00 to be paid as attorneys' fees, and judgment was entered in case 9722*a* for $2,800.00, less the sum of $560.00, to be paid as attorneys' fees; that thereafter, to wit, on April 7, 1904, the said judgment in cause 9722 was re-opened, and judgment entered in favor of Alice V. Curtis, administratrix of William R. Curtis, for $4,307.50, and judgment was entered in favor of J. E. B. Stewart, administrator of James C. Curtis, for $4,307.50, each being subject to payment of one-half of the attorneys' fees of $1,723.00; the said judgment in cause 9722*a* for $2,800.00 was not disturbed, and all of said judgments remain and are now in full force and effect, unreversed and unsatisfied.

5th. Complainant further avers that after said William R. Curtis had filed his said claims in the Court of Claims, but before any judgment had been entered therein, to wit, on the 17th day of May,

1899, he filed in the district court of the United States, for the northern district of Texas, his voluntary petition in bankruptcy, and such proceedings were had upon said petition that said petitioner was refused his discharge as a bankrupt after examination, and this complainant was duly appointed the trustee of the estate of said bankrupt, and qualified by giving the bond required by the referee, said bond being approved June 12, 1899, as appears from the certified copy of the order approving said bond filed herewith. Complainant further avers that the claims scheduled by said Curtis in said bankrupt proceedings aggregate over $1,051,000.00, one of said claims being the claim of the State of Texas against said William R. Curtis for money due as rent on lease of lands in the State of Texas for $8,078.33, said claim being represented by a judg-
4 ment of the district court of Travis county, Texas; that thereafter, to wit, on June 1, 1903, this complainant filed in said causes 9722 and 9722*a* on the docket of the Court of Claims, a certified copy of the approval of his bond as trustee in the bankruptcy of the estate of William R. Curtis, and gave notice of such filing to the attorneys of record in said causes, in pursuance with the provisions of section 21, sub-head *e*, of the United States bankruptcy law, approved July 1, 1898. Complainant further avers that said causes pending in the Court of Claims were argued and submitted to the court for judgment on February 9, 1904, and the judgments were rendered as hereinbefore set forth, without his being given any notice thereof by any one, and for that reason he was not represented at the hearing of said causes, and complainant has every reason to believe, and therefore avers, that the court in entering the judgments in the form it did, had no knowledge of the bankruptcy proceedings hereinbefore referred to.

6th. Complainant further avers that on the 19th day of April, 1904, he filed in said causes in the Court of Claims his petition setting forth the fact of the bankruptcy of said William R. Curtis, as hereinbefore referred to, and asking that said judgments hereetofore described be re-opened; that this complainant be substituted as claimant in said cases in the place and stead of said William R. Curtis, and to the exclusion of said Alice V. Curtis, administratrix, and that judgment in cause 9722 be entered in his favor as trustee in bankruptcy, for the sum of $4,307.50, less one-half of the attorneys' fees of $1,723.00, and that judgment be entered in his favor as trustee in bankruptcy in cause 9722*a* for the sum of $2,800.00
5 less the sum of $560.00, to be paid as attorneys' fees.

7th. Said petition was called to the attention of the Court of Claims on the 16th day of May, 1904, and after taking the same under advisement they refused to grant the prayer of said petition on the ground as petitioner is advised and believes that a contest between this complainant and the administratrix of William R. Curtis over the possession of said fund, should not be fought out and

determined in the Court of Claims, but in a court of equity. The prayer of said petition was denied without prejudice.

8th. Complainant further avers that on April 27, 1904, Congress passed an act entitled "An act making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1904, and for other purposes," in which provision was made for payment of all judgments rendered by the Court of Claims in the Indian depredation cases, and among which number were included the judgments hereinbefore referred to as having been entered in favor of Alice V. Curtis, administratrix of William R. Curtis, and complainant avers that the money appropriated for the payment of said judgments is now in the hands of Leslie M. Shaw, the Secretary of the Treasury, and he is authorized and prepared to make payment thereof to the person or persons who may be entitled thereto.

9th. Complainant further avers that by virtue of the provisions of said bankrupt act of July 1, 1898, all the right, title, interest and estate of said William R. Curtis passed to and became vested in, this complainant as his trustee in bankruptcy, by operation of law, including the claim, against the United States and the Comanche Indians hereinbefore set forth, and whatever funds might be
6 realized therefrom, and he avers that the appointment of Alice V. Curtis, administratrix of the estate of said William R. Curtis, after his death, carried to her no title, interest or estate in and to said claims, and gave her no right to collect the judgments entered in said Court of Claims as hereinbefore set forth.

Wherefore the premises considered, complainant being without remedy at law, files this his bill of complaint, and prays

1. That the said Alice V. Curtis, administratrix of William R. Curtis, and said Leslie M. Shaw, be made parties defendant hereto and be required to answer the exigencies of this bill.

2. That a restraining order *pendente lite* be issued herein, restraining the payment by said Shaw to Alice V. Curtis, administratrix, or any one in her name, or on her behalf, including her attorneys and agents, the said judgments entered in her favor in the Court of Claims in the two Indian depredation claims 9722 and 9722*a*.

3. That the complainant be decreed as matter of law to be entitled to receive and collect the full amount of said judgments, for the purpose of having the same administered in said bankrupt case pending in the United States district court for the northern district of Texas, according to the provisions of the bankrupt law.

4. That upon the final hearing the said Leslie M. Shaw, Secretary of the Treasury, be authorized and directed to pay over the full amount of said judgments to this complainant as trustee in bankruptcy of the estate of William R. Curtis, and that said Alice V. Curtis, administratrix, her agents and attorneys, be forever
7 restrained and enjoined from collecting and receiving the amount of said judgments.

And for such other and further relief as the nature of the case may require, and to the court may seem just and proper.

The defendants to this bill are Alice V. Curtis, administratrix of William R. Curtis, and Leslie M. Shaw, Secretary of the Treasury.

MORGAN BRYAN,
Trustee of Est. Wm. R. Curtis, Bankrupt,
By JOHN J. HAMILTON,
Att'y in Fact.

HAMILTON & COLBERT,
Solicitors for Complainant.

I, John J. Hamilton, do solemnly swear that I am the attorney-in-fact for Morgan Bryan, complainant in the above-entitled cause, for the purpose of making this affidavit; that I have read the foregoing bill of complaint, and know the contents thereof; that the matters and things therein stated on my personal knowledge are true, and the matters and things therein stated on information and belief, I believe to be true.

JOHN J. HAMILTON.

Subscribed and sworn to before me this 23rd day of May, A. D. 1904.

LOUISE F. DYER,
Notary Public, D. C.

[NOTARIAL SEAL.]

8 *Restraining Order and Rule to Show Cause.*

Filed May 31, 1904.

In the Supreme Court of the District of Columbia.

MORGAN BRYAN, Trustee in Bankruptcy of the Estate of William R. Curtis, *vs.* ALICE V. CURTIS, Administratrix of William R. Curtis, and Leslie M. Shaw, Secretary of the Treasury.	Equity. No. 24697.

Upon consideration of the bill of complaint filed in the above-entitled cause, it is this 31st day of May, A. D. 1904, adjudged and ordered that the defendant Alice V. Curtis, administratrix of the estate of William R. Curtis, and her agents and attorneys, be, and they are hereby enjoined and restrained until the further order of this court, from receiving from the Treasury of the United States, or from any officer of the United States, any sums or sum of money, vouchers, drafts, warrants, or other order, for the payment of money, in settlement of two certain claims filed in the Court of Claims of the United States, and numbered 9722 and 9722*a*, entitled Alice V. Curtis, administratrix of William R. Curtis *vs.* The United States, *et al.*, and known as Indian depredation cases, in which said cases

judgments were entered in favor of Alice V. Curtis, administratrix of William R. Curtis, deceased, for two thousand eight hundred dollars ($2,800.00) and four thousand three hundred and seven dollars and fifty cents ($4,307.50) respectively.

It is further ordered and adjudged that the defendant
9 Leslie M. Shaw, Secretary of the Treasury of the United States, show cause in this court on Tuesday the 7th day of June, A. D. 1904, at ten o'clock, a. m., why he should not be enjoined and restrained from paying over to or delivering to the said Alice V. Curtis, administratrix of the estate of William R. Curtis, or her agents or attorneys, any sum or sums of money, vouchers, warrants, drafts or other order for the payment of money, in payment of the two certain claims filed in the Court of Claims of the United States, and particularly referred to above, in which cases judgments as aforesaid were rendered in favor of said Alice V. Curtis, administratrix, for said sums of twenty-eight hundred dollars ($2,800.00) and four thousand three hundred and seven dollars and fifty cents ($4,307.50), respectively.

ASHLEY M. GOULD, *Justice.*

Marshal's Return.

Served copy of within order on W. F. McClelan, acting Secretary of the Treasury, and on Silas Hare, att'y for Alice V. Curtis, admtx. &c.

May 31, 1904.

AULICK PALMER, *Marshal.*

10 *Injunction Undertaking.*

Filed Jun- 1, 1904.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

MORGAN BRYAN, Trustee in Bankruptcy, Complainant, *vs.* ALICE V. CURTIS, Adm'x, ET AL., Defendant-. } No. 24697. Equity.

Morgan Bryan trustee in bkcy., the complainant, and John Quinn his surety, hereby undertake to make good to the defendant all damages by him suffered or sustained by reason of wrongfully and inequitably suing out the injunction in the above-entitled cause, and stipulate that the damages may be ascertained in such manner as the justice shall direct, and that, on dissolving the injunction, he

may give judgment thereon against the principal and sureties for said damages in the decree itself dissolving the injunction.

MORGAN BRYAN, *Trustee*,
By JOHN J. HAMILTON,
Att'y in Fact.
JOHN QUINN.

Approved May 31st, 1904.
ASHLEY M. GOULD, *Justice.*

(Endorsed :) I certify that the within surety John Quinn is the owner of real estate in the District of Columbia more than double the amount of the sums claimed in the bill of complaint. John J. Hamilton, att'y at law.

11 *Demurrer of Secretary of the Treasury.*

Filed Jun- 7, 1904.

In the Supreme Court of the District of Columbia.

MORGAN BRYAN, Trustee,
vs.
ALICE V. CURTIS, Administratrix, ET AL. } Equity. No. 24697.

Separate Demurrer of the Defendant H. A. Taylor, Acting Secretary of the Treasury of the United States.

Now comes the defendant H. A. Taylor, acting Secretary of the Treasury of the United States, and by protestation, not confessing or acknowledging all or any of the matters and things in the bill of complaint to be true in such manner and form as the same are therein set forth and alleged, doth demur to said bill of complaint upon and for the following reasons, among others :

1. That said bill contains no matter of equity whereon this court can ground any decree or give complainant any relief against this defendant.

2. That it appears in said bill that this defendant is sued as an officer of the Government of the United States acting for and on behalf of the said United States, and concerning matters arising out of and within his duty and employment as such public officer, and not in any manner in his private character as an individual.

3. That it appears in said bill that the United States has an interest in the subject-matter thereof, but the said United States is not and cannot be made a party defendant to said bill.

4. That it appears in said bill that a portion of each of the
12 judgments mentioned in the said bill, which portions amount to the sum of $2283, is deducted from the amount of the said

judgments and awarded to a certain attorney or attorneys as fees; wherefore the said attorney or attorneys should be made party or parties to this cause.

5. That it appears from the said bill that the defendant Alice V. Curtis is a resident and now actually present in the State of Texas, and there is no averment that she was, at the time of the filing of the bill herein, or since has been, present or to be found in the District of Columbia; that there is no averment that the said Alice V. Curtis has any property or any credits in the said District other than the two judgments against the United States mentioned in the said bill; wherefore there is no ground shown upon which this court can assume to exercise jurisdiction over either the said Alice V. Curtis or the said judgments.

Wherefore, and for divers other good causes of demurrer appearing in said bill of complaint, this defendant prays judgment of this honorable court whether he shall be compelled to make any other answer to said bill.

MORGAN H. BEACH,
Solicitor for Defendant H. A. Taylor,
Acting Secretary of the Treasury.

I hereby certify, as counsel for the defendant H. A. Taylor, acting Secretary of the Treasury, in the foregoing demurrer, that in my opinion the same is well founded in point of law and proper to be filed.

MORGAN H. BEACH.

13 DISTRICT OF COLUMBIA, *ss*:

The defendant H. A. Taylor, acting Secretary of the Treasury, makes oath that the foregoing demurrer is not interposed for delay.

H. A. TAYLOR.

Subscribed and sworn to before me, this 6th day of June, A. D. 1904.

JAS. N. FITZPATRICK,
Notary Public.

[NOTARIAL SEAL.]

Answer of Secretary of Treasury to Rule to Show Cause.

Filed Jun- 7, 1904.

In the Supreme Court of the District of Columbia.

MORGAN BRYAN
vs.
ALICE V. CURTISS ET AL. } No. 24697. In Equity.

Answer of the Defendant H. A. Taylor, Acting Secretary of the Treasury, to the Rule to Show Cause.

The defendant H. A. Taylor, acting Secretary of the Treasury, for answer to the rule why an injunction should not issue against him says:

1. He has no knowledge of the averments of paragraph 1 of the bill of complaint.

2. He admits the averments of paragraph 2 of said
14 bill.

3 and 4. On information and belief he admits the averments of paragraphs 3 and 4 of said bill.

5. He has no knowledge of the averments of paragraph 5 of said bill.

6 and 7. This defendant admits that on or about the 18th day of May, 1904, complainant filed a petition in the Court of Claims asking to be substituted as party in the place of the defendant Alice V. Curtiss, administratrix, in the suits mentioned in the bill of complaint, and that on the 31st day of May, 1904, the Court of Claims overruled said petition without prejudice to the right of the complainant herein to assert his claim against said administratrix in any court having jurisdiction of the person and of the subject matter thereof. This defendant attaches hereto as Exhibit A a certified copy of said petition and of said order overruling the same.

8. This defendant admits the averments of paragraph 8 of said bill.

9. This defendant denies the averments of paragraph 9 of said bill.

10. Further answering said rule to show cause this defendant says that it is provided by section 9 of the act of March 3, 1891, commonly called the Indian depredations act, and under which act the judgments mentioned in the bill of complaint were recovered, that all transfers of any claims against the United States such as those mentioned in said bill are declared void, except such transfers as have occurred or shall occur in the administration of decedents' estates, and it is made the duty of this defendant by said section in paying judgments recovered under said act to pay and de-
15 liver the warrants therefor only to the claimant, or his lawful heirs, executors, administrators or transferees under

administrative proceedings, except so much thereof as shall be allowed the claimant's attorney by the court for prosecuting such claims, and it is directed that such allowance shall be paid direct to said attorneys; and this defendant says that the Court of Claims in awarding the judgments mentioned in the bill of complaint directed that there should be paid to the attorney in said cases, the Honorable Silas Hare, the sum of twenty per cent. thereof. And this defendant says that the defendant Alice V. Curtiss is the lawful administratrix of the claimant William R. Curtiss in said cases, and that it is his duty to pay the amount of said fees so allowed to the same Hare, and to pay the remainder of said judgments to the defendant Alice V. Curtiss as such administratrix.

This defendant further says that, if it is sought by said bill to restrain him from paying the said fees to the said Hare, the said Hare is a necessary party to said bill.

11. Further answering said rule to show cause, this defendant says that the defendant Alice V. Curtiss is a resident of the State of Texas, and is now personally present in the said State, and that she is not and never has been a resident of the District of Columbia or domiciled in the said District, and that the said Alice V. Curtiss was not, at the time of the filing of the bill herein, nor has since been, nor is now in the said District; wherefore this defendant submits that the judgments against the United States in favor of the said Alice V. Curtiss, which are mentioned in the bill, are not sufficient grounds upon which this court can properly assume ju-
16 risdiction over the said Alice V. Curtiss, or over the funds accruing upon the said judgments.

Having fully answered said rule, this defendant submits that the same should be discharged, and the injunction denied.

H. A. TAYLOR.

MORGAN H. BEACH,
Solicitor for Defendant Secretary of the Treasury.

DISTRICT OF COLUMBIA, *ss:*

I, H. A. Taylor, acting Secretary of the Treasury, on oath, say that I have read the foregoing answer to the rule to show cause by me subscribed, and know the contents thereof; that the facts therein stated of my own knowledge are true, and that those stated on information and belief I believe to be true.

H. A. TAYLOR.

Subscribed and sworn to before me, this 6th day of June, 1904.

JAS. N. FITZPATRICK,
Notary Public.

[NOTARIAL SEAL.]

17 *Amended Bill.*

Filed Jul- 21, 1904.

In the Supreme Court of the District of Columbia.

MORGAN BRYAN, Trustee in Bankruptcy,
vs.
ALICE V. CURTIS ET AL. } Equity. No. 24697.

Now comes the complainant, leave of court being first had and obtained, and amends his original bill of complaint filed herein by adding thereto the following.

Paragraph 10. Complainant further avers that the said defendant Alice V. Curtis, is a non resident of the District of Columbia, and is a resident, as he is informed and believes, of the State of Texas, and it will be necessary for him to obtain service on her by publication, and the probable contest over the fund in this case will be prolonged some time and he is advised and believes and therefore avers that a receiver should be appointed by this court to take charge of and collect from the Treasury Department the judgments of the Court of Claims herein referred to as having been entered in favor of said Alice V. Curtis, administratrix of the estate of William R. Curtis, to give all necessary receipts and releases therefor to the Treasury Department, and to hold the same subject to the future order and direction of this court.

And in addition to the prayers of the original bill of complaint the complainant prays as follows:—

5. That in the event that personal service cannot be had upon said defendant Alice V. Curtis requiring her to answer the
18 exigencies of the original and amended bills of complaint, that substituted service by way of publication may be had against her as required by law in such cases made and provided.

6. That until the final determination of this cause, the said Alice V. Curtis, administratrix as aforesaid, her attorneys, agents or representatives, be restrained and enjoined from collecting or receiving, or in any manner attempting to collect or receive the amount of the said judgments from the Treasury Department, or the officer of the Government having charge of the payment of said judgments.

7. That pending the final hearing of this cause a receiver or receivers be appointed by this court to take charge of, collect and receive, from the Treasury Department, or other department or officer of the Government of the United States having charge of the payment thereof, all of the judgments entered in favor of Alice V. Curtis, administratrix of the estate of William R. Curtis by the Court of Claims and mentioned and described in said original bill of complaint.

HAMILTON & COLBERT,
Sol'rs for Compl.

19 *Memorandum.*

July 5, 1904.—Subpœna to answer returned "Defendant Alice V. Curtis not to be found July 5, 1904."

Order for Appearance of Absent Defendant.

Filed Aug. 10, 1904.

In the Supreme Court of the District of Columbia.

MORGAN BRYAN, Trustee in Bankruptcy of William R. Curtis, *vs.* ALICE V. CURTIS, Administratrix of William R. Curtis and Leslie M. Shaw, Secretary of the Treasury.	No. 24697, Equity Docket No. 55.

The object of this suit is to establish and enforce the claim of the complainant to the full amount of two judgments entered by the Court of Claims in favor of said administratrix, the funds for the payment of which are now in the hands of Hon. Leslie M. Shaw, Secretary of the Treasury.

Provided a copy of this order be published once a week for three successive weeks in the Washington Law Reporter and the Washington Post.

On motion of the complainant, it is this 10th day of August, A. D. 1904, ordered that the defendant Alice V. Curtis cause
20 her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default.

By the court.

JOB BARNARD, *Justice.*

Motion for Appointment of Receiver.

Filed Aug. 11, 1904.

In the Supreme Court of the District of Columbia.

MORGAN BRYAN, Trustee in Bankruptcy, *vs.* ALICE V. CURTIS ET AL.	Equity. No. 24697.

Now comes the complainant and moves the court to appoint a receiver or receivers to take charge of, collect and receive from the Treasury Department the amount of the judgments entered by the

Court of Claims in favor of Alice V. Curtis, administratrix of William R. Curtis, and for the payment of which appropriation has been made by act of Congress; said receiver to hold the sums so collected until the further order of this court.

HAMILTON & COLBERT,
Attorneys for Complainant.

Morgan H. Beach, attorney for Leslie M. Shaw, Treasurer:

Please take notice that we will call up the above motion
21 before the justice holding the circuit court on Wednesday, *July* 27, 1904, at ten o'clock, or as soon thereafter as counsel can be heard.

HAMILTON & COLBERT,
Attorneys for Complainant.

Order Denying Motion for Appointment of Receiver, &c.

Filed Aug. 16, 1904.

In the Supreme Court of the District of Columbia.

MORGAN BRYAN, Trustee in Bankruptcy,
vs.
ALICE V. CURTIS, Administratrix, ET AL. } Equity. No. 24697.

This cause coming on to be heard upon the motion for the appointment of a receiver, and being argued by counsel and considered by the court, it is, by the court, this 16th day of August, A. D. 1904, adjudged and ordered that the said motion for the appointment of a receiver be and it is hereby denied.

It is further adjudged and ordered that the restraining order heretofore issued against the defendant Alice V. Curtis, administratrix, be and the same is hereby continued in force until the further order of this court.

JOB BARNARD,
Associate Justice.

22 *Demurrer of Secretary of Treasury to Amended Bill.*

Filed Aug. 22, 1904.

In the Supreme Court of the District of Columbia.

MORGAN BRYAN, Trustee,
vs.
ALICE V. CURTIS, Administratrix, ET AL. } Equity. No. 24697.

Separate Demurrer of the Defendant Leslie M. Shaw, Secretary of the Treasury, to the Amended Bill of Complaint.

Now comes the defendant Leslie M. Shaw, Secretary of the Treasury, and demurs to the amended bill of complaint upon and for the following reasons, among others:

1. That said amended bill contains no matter of equity whereon this court can ground any decree or give complainant any relief against this defendant.

2. That it appears in said amended bill that this defendant is sued as an officer of the Government of the United States acting for and on behalf of the said United States, and concerning matters arising out of and within his duty and employment as such public officer, and not in any manner in his private character as an individual.

3. That it appears in said amended bill that the United States has an interest in the subject matter thereof, but the said United States is not and cannot be made a party defendant to said bill.

5. That it appears from said amended bill that the defendant Alice V. Curtiss is a resident and now actually present in the
23 State of Texas, and there is no averment that she was, at the time of the filing of the bill herein, or since has been, present or to be found in the District of Columbia; that there is no averment that the said Alice V. Curtiss has any property or any credits in the said District other than the two judgments against the United States mentioned in said bill; wherefore there is no ground shown upon which this court can assume to exercise jurisdiction over either the said Alice V. Curtiss or the said judgments.

Wherefore, and for divers other good causes of demurrer appearing in said bill of complaint, this defendant prays judgment of this honorable court whether he shall be compelled to make any other answer to said bill.

MORGAN H. BEACH,
Solicitor for Defendant Secretary of the Treasury.

I hereby certify, as counsel for the defendant Leslie M. Shaw, in the foregoing demurrer, that in my opinion the same is well founded in point of law and proper to be filed.

MORGAN H. BEACH.

DISTRICT OF COLUMBIA, *ss:*

The defendant, R. B. Armstrong, acting Secretary of the Treasury, makes oath that the foregoing demurrer is not interposed for delay.

R. B. ARMSTRONG,
Acting Secretary of the Treasury.

Subscribed and sworn to before me, this 20th day of August, A. D., 1904.

JAS. N. FITZPATRICK,
[NOTARIAL SEAL.] *Notary Public.*

24 *Special Appearance of Alice V. Curtis.*

Filed Oct. 1, 1904.

In the Supreme Court of the District of Columbia.

MORGAN BRYAN, Trustee,
vs.
ALICE V. CURTIS, Administratrix, ET AL. } No. 24697. In Equity.

Now comes Alice V. Curtiss, administratrix of the estate of William R. Curtiss, who is named in the bill of complaint as one of the defendants in the above entitled cause, and, by Silas Hare, her solicitor, enters her special and limited appearance in this cause for the sole purpose of objecting to the jurisdiction of the court.

SILAS HARE,
Solicitor for Alice V. Curtiss, Administratrix, for the Sole Purpose of Objecting to the Jurisdiction of This Court.

Memoranda.

November 5, 1904.—Proof of publication in Washington Law Reporter of order for appearance of Alice V. Curtis, filed.

February 18, 1905.—Proof of publication in Washington Post of order for appearance of Alice V. Curtis, filed.

February 18, 1905.—Affidavit of John J. Hamilton as to
25 mailing copy of order of publication to defendant Alice V. Curtis filed.

Motion of Defendant to Set Aside Attempted Service by Publication.

Filed Mar. 30, 1905.

In the Supreme Court of the District of Columbia.

MORGAN BRYAN, Trustee in Bankruptcy,
vs.
ALICE V. CURTIS, Administratrix of William R. Curtis, *et al.* } In Equity. No. 24697.

Now comes Alice V. Curtis, administratrix of the estate of William R. Curtis, deceased, in her proper person, and, appearing only for the purposes of this motion and for objecting to the jurisdiction of the court, and not for any other purpose, moves the court to vacate and set aside the attempted service by publication herein had on behalf of the complainant against her, the said Alice V. Curtis, administratrix, as aforesaid, and to vacate the order for the said publication.

And as grounds for this motion the said Alice V. Curtis shows as follows:

I. That the said Alice V. Curtis is not a resident of the District of Columbia, and that she has not been found or served with process in the said District.

26 II. That the said Alice V. Curtis is administratrix of the estate of William R. Curtis, deceased, by virtue of an appointment made by the proper court of the State of Texas, and not otherwise, and has never been appointed such administratrix by any court or other authority in the District of Columbia; and therefore, as she is advised, she is not liable to be sued as such administratrix in the said District.

III. That the debt which is mentioned in the bill of complaint is not such property or assets of the said Alice V. Curtis as administratrix aforesaid, as will warrant proceeding by publication against her as such administratrix; and that the said Alice V. Curtis has not any other property, assets or debts belonging or due to her as such administratrix in the District of Columbia.

And in support of this motion the said Alice V. Curtis files herewith and refers to the affidavit hereto attached.

ALICE V. CURTIS.

In the Supreme Court of the District of Columbia.

MORGAN BRYAN, Trustee in Bankruptcy,
vs.
ALICE V. CURTIS, Administratrix of William R. Curtis, *et al.* } In Equity. No. 24697.

STATE OF TEXAS,
County of ——, } *ss:*

Before me personally appeared Alice V. Curtis, who being first duly sworn, deposed and on her oath saith:

That she is the identical Alice V. Curtis who is named as a party defendant in the above-entitled cause and is the maker of the foregoing motion hereto attached; and that she is administratrix of William R. Curtis, deceased, and as such administratrix was plaintiff in the suit against the United States, brought and adjudicated in the Court of Claims, which is mentioned in the bill of complaint filed in this cause.

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That she, the said Alice V. Curtis, is a citizen of the State of Texas and actually resident therein; that she was not within the District of Columbia at the date of the institution of this suit, nor for a long time before, nor has she since been within the said District, and that she has not been served with any process in the said suit.

That she, the said Alice V. Curtis, was appointed administratrix of the estate of William R. Curtis, deceased, by the county court of Clay county in the State of Texas, the said county being the domicile of the said William R. Curtis in his life time and the county in which he died; and that she, the said Alice V. Curtis, is still administratrix of the said estate by virtue of the said appointment, and has never been appointed such administratrix by any court or other authority in the District of Columbia.

That she, the said Alice V. Curtis, as administratrix of the said William R. Curtis, deceased, has no property, debts or other assets in her possession or due to her in the District of Columbia, unless the judgment against the United States in her favor rendered by the Court of Claims and mentioned in the bill of complaint herein be such debt or assets; and that she has not acquired or sought to acquire, or demanded or laid claim to any property, debts or other assets in the said District, and has not brought any suits or otherwise asserted any title to such assets in the said District, except by authorizing the suit against the United States, mentioned in the bill of complaint, to be prosecuted in the Court of Claims.

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ALICE V. CURTIS.

Subscribed and sworn to before me this 14 day of March, A. D. 1905.

J. F. BAILEY,
[NOTARIAL SEAL.] *Notary Public, Potter Co., Texas.*

Messrs. Hamilton & Colbert, solicitors for complainant.

GENTLEMEN: Please take notice that as a friend of the court I shall ask the action of the court upon the foregoing motion on Tuesday, the 28th day of March 1905, before Mr. Justice Stafford in equity court No. 2, at the coming in of the court on that day or as soon thereafter as counsel can be heard.

SILAS HARE.

Service of copy of above motion acknowledged this 24th day of March, 1905.

Copy left by Ernest with office boy 3.20 p. m.

29 *Order Sustaining Demurrer, Appeal, &c.*

Filed Apr. 7, 1905.

In the Supreme Court of the District of Columbia.

MORGAN R. BRYAN, Trustee in Bankruptcy,
vs.
ALICE V. CURTIS, Administratrix, and Leslie M. Shaw, Secretary of the Treasury. } No. 24697. In Equity.

This cause coming on to be heard upon the bill of complaint and the demurrer of the defendant Leslie M. Shaw, Secretary of the Treasury, and being argued by counsel and considered by the court: It is, by the court and the authority thereof, this 7th day of April, A. D. 1905, adjudged, ordered and decreed that the said demurrer be and it is hereby sustained, and the complainant not desiring to amend the bill, it is further adjudged, ordered and decreed that the restraining order and rule to show cause heretofore issued be discharged, and that the bill of complaint be and it is hereby dismissed, with costs.

WENDELL P. STAFFORD,
Associate Justice.

From the foregoing decree the complainant in open court notes an appeal to the Court of Appeals, and the penalty of the appeal bond to operate as a supersedeas is hereby fixed in the sum of seven thousand dollars.

WENDELL P. STAFFORD,
Associate Justice.

30 *Memoranda.*

May 3, 1905.—Penalty of appeal bond for costs fixed at $100.00.
May 3, 1905.—Appeal bond for costs filed.

Præcipe for Transcript of Record.

Filed May 5, 1905.

In the Supreme Court of the District of Columbia.

MORGAN BRYAN, Trustee,
vs.
ALICE V. CURTIS, Administratrix, ET AL. } Equity. No. 24697.

The clerk will please include in the record on appeal in the above entitled cause the following papers:

May 31, 1904. Bill of complaint.
" 31, " Restraining order.
June 1, 1904. Injunction bond.
" " " Rule as to injunction.
June 7, 1904. Demurrer of defendant No. 2.
" " " Answer of defendant No. 2 to rule.
July 21, 1904. Amended bill.

MEM.—Return of marshal as to service on defendant Curtis.

August 10, 1904. Order for appearance of absent defendant.
August 11, 1904. Motion for receiver.
August 16, 1904. Discharge of rule of June 1st.
August 22, 1904. Answer to amended bill.
October 1, 1904. Appearance of defendant No. 1.

31 MEM.—November 5, 1904. Proof of publication.
MEM.—February 18, 1905. Affidavit of mailing order of publication.

March 30, 1905. Motion to vacate service by publication.
April 7, 1905. Decree sustaining demurrer.
Bond on appeal.

HAMILTON & COLBERT,
Attorneys for Complainant.

32 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, }
District of Columbia, } *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 31, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 24,697, in equity, wherein Morgan Bryan, trustee in bankruptcy, is complainant, and Alice V. Curtis, administratrix of the estate of William R. Curtis, *et al.* are defendants, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 9th day of May, A. D. 1905.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1551. Morgan Bryan, trustee in bankruptcy, appellant, *vs.* Alice V. Curtis, administratrix, &c., *et al.* Court of Appeals, District of Columbia. Filed May 10, 1905. Henry W. Hodges, clerk.

Court of Appeals, District of Columbia.

APRIL TERM, 1905.

No. 1551.

MORGAN BRYAN, TRUSTEE IN BANKRUPTCY,
APPELLANT,

vs.

ALICE V. CURTIS, ADMINISTRATRIX OF THE ESTATE OF WILLIAM R. CURTIS, AND LESLIE M. SHAW, SECRETARY OF THE TREASURY.

BRIEF ON BEHALF OF APPELLANT.

GEORGE E. HAMILTON,
MICHAEL J. COLBERT,
JOHN J. HAMILTON,
Attorneys for Appellant.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 16073

Court of Appeals, District of Columbia.

APRIL TERM, 1905.

No. 1551.

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ALICE V. CURTIS, ADMINISTRATRIX OF THE ESTATE OF WILLIAM R. CURTIS, AND LESLIE M. SHAW, SECRETARY OF THE TREASURY.

BRIEF ON BEHALF OF APPELLANT.

I.

Statement of Case.

This is an appeal from a decree of the supreme court of the District of Columbia, sitting in equity, entered on the 7th day of April, 1905, sustaining the demurrer to a bill filed by the appellant, claiming title and right to possession of certain funds as trustee in bankruptcy of the estate of William R. Curtis, deceased, said funds having been appropriated by act of Congress to pay the amount of two judg-

ments entered by the Court of Claims in Indian depredation cases.

The bill sets out that William R. Curtis, during his lifetime, filed two suits in the Court of Claims on the 15th day of August, 1893, to recover for depredations committed by the Comanche Indians, the United States also being named as a party defendant; that said suits were filed under provisions of the act of Congress of March 3, 1891 (26 Stat., 851), known as the Indian depredation law; that on February 24, 1902, Alice V. Curtis, the administratrix of said William R. Curtis, was substituted as claimant in said cases in the place of said William R. Curtis, who died intestate; that said cases were finally determined by the Court of Claims on April 7, 1904, and judgments were entered in favor of Alice V. Curtis, administratrix, for $4,307.50 in one case and $2,800 in the other case. The bill further alleges that while said cases were pending in the Court of Claims, to wit, on May 17, 1899, the said William R. Curtis, original claimant, filed his voluntary petition in bankruptcy in the district court of the United States for the northern district of Texas, and was thereafter adjudged a bankrupt, and the appellant was appointed his trustee, and qualified as such on June 12, 1899; that on June 1, 1903, the appellant filed in said cases pending in the Court of Claims a certified copy of the approval of his bond as trustee in pursuance of section 21, subhead E, of the bankrupt law, but he took no further action with regard to said cases at that time, and judgments were entered in favor of the administratrix without notice to him; that on the 19th day of April, 1904, he filed a petition in the Court of Claims, asking that said judgments be reopened and be entered in his favor on the ground that all the right, title, and interest in said Indian depredation claims passed to and became vested in the trustee in bankruptcy of said William R. Curtis upon his appointment and qualification, and that the administratrix thereafter appointed received no title to said claims by virtue of her

appointment, and was not entitled to the proceeds of said judgments; but the Court of Claims denied said petition without prejudice to the right of appellant to apply to a court of proper jurisdiction for a determination of the controversy over the possession of the proceeds of said judgments. The bill further recites that Congress had appropriated the funds necessary to pay the two judgments of the Court of Claims aforesaid, and prayed for a restraining order and injunction restraining the said defendant, Shaw, from paying to Alice V. Curtis, administratrix, the amount of said judgments, and that appellant be decreed to be entitled to the full amount of said judgments as trustee in bankruptcy of the estate of said William R. Curtis, deceased.

Upon the filing of said bill a restraining order was issued against the said Alice V. Curtis, administratrix, her agents and attorneys, and a rule was issued against the defendant Shaw to show cause why he likewise should not be restrained from paying over said fund to Alice V. Curtis, administratrix, her agents or attorneys. Under an agreement with counsel this rule was never pressed further, it being understood and agreed that the Secretary of the Treasury would retain possession of the fund until the final decree.

On August 11, 1904, the appellant made application for the appointment of a receiver to collect and take charge of the fund in the hands of the Secretary of the Treasury and to hold the same until the further order of the court, but said application was overruled on August 16, 1904, the court expressing the opinion that a receiver should not be appointed until the defendant Alice V. Curtis had entered her appearance in said cause or the time for such appearance had expired, and the restraining order theretofore issued against the said Alice V. Curtis, administratrix, was continued in force until the further order of the court.

II.

In response to the summons and the rule to show cause issued against the Secretary of the Treasury a demurrer to said bill and a return to said rule were filed on behalf of the Secretary (Rec., pp. 7 and 9).

The subpœna issued against the defendant Alice V. Curtis being returned "not to be found," an order of publication against her was issued on August 10, 1904 (Rec., p. 12), under the provisions of section 105 of the Code, and duly published (Rec., p. 15); and in response to said publication the defendant Alice V. Curtis, on October 1, 1904, entered a special appearance in said case for the purpose of objecting to the jurisdiction of the court (Rec., p. 15). Thereafter, to wit, on March 30, 1905, she filed a motion in said case to have said service on her by way of publication set aside on the ground that, being a foreign administratrix and a nonresident of the District of Columbia, she was not subject to suit in said District as such administratrix, and on the further ground that the debt mentioned in the bill of complaint was not such property or assets of said administratrix as would warrant proceeding by publication against her (Rec., p. 16).

This motion of the administratrix was never directly acted upon by the trial court, although the court expressed the opinion that said service by publication was sufficient under the provisions of the Code; but the merits of the controversy were disposed of in the decision upon the demurrer and return to the rule issued against the Secretary of the Treasury.

III.

ARGUMENT.

The demurrer and the return to the rule to show cause were filed on behalf of the Secretary of the Treasury before the decision of this court was rendered in the case of Roberts *vs.* Consaul, 33 Wash. L. R., p. 98, and it will not be necessary, therefore, to consider the points raised by the pleadings as to whether the court has jurisdiction over the defendant Shaw because of his relation to the fund as an officer of the United States merely in the discharge of an official duty, and as to whether the United States has any interest in this controversy. These questions were raised in that case, and the court said:

"Assuming, as we must for the purposes of the present appeal, that the court below had jurisdiction of the subject-matter, we have no doubt of its jurisdiction to control the action of the appellant, notwithstanding his official capacity, in respect of the payment of the fund. The suit is in no sense against the United States. The money having been appropriated and directed to be paid to the claimant, they have no interest in the controversy. By the act of appropriation the appellant, as Treasurer of the United States, is charged with the plain, ministerial duty of making immediate payment upon the demand of the person specified therein."

If we understand the decision in the Roberts-Consaul case correctly, then the Secretary of the Treasury, having no interest in this controversy and acting merely in a ministerial capacity in relation to the fund in controversy, has no right to urge or rely upon the other points raised by said demurrer and return to the rule to show cause on behalf of the administratrix. This suit was filed in the District of Columbia by the trustee in bankruptcy under authority of the United States bankrupt law approved July 1, 1898, particu-

larly section 47 of that law, and at the direction of the United States district court for the northern district of Texas, against another claimant to said fund, the administratrix, who came to said District first for the purpose of prosecuting said claims before the Court of Claims and who is now here asking that the amount of the judgments entered in said court be turned over to her by the Secretary of the Treasury. The bill in equity sets forth that the title to the whole of said fund is in the trustee in bankruptcy and asks for the appointment of a receiver to collect and hold said fund until the trustee's claim thereto is judicially established.

This court decided in the above-cited case, which is very similar in many respects to the case at bar, that the fund has a locality in the District of Columbia, and that the Treasury official charged with the duty of making payment would be protected by the receipt of a receiver appointed in this jurisdiction.

We submit, therefore, that the former decisions of this court in Consaul *vs.* Roberts, 33 Wash. L. R., 98, and Sanborn *vs.* Maxwell, 18 App. D. C., 245, are decisive of the only questions that can be raised upon the record which is now before this court.

Inasmuch, however, as the decree appealed from was based upon a decision of the lower court upon all of the points raised by the pleadings, and in case of reversal this cause would be sent back to the lower court for further proceedings, we propose to discuss the other questions presented in the case.

We desire to state, in passing to a discussion of these matters, that the fourth point raised by the demurrer has been eliminated from the case. No claim was made in the bill to the attorneys' fees allowed in the Indian depredation cases by the Court of Claims, and as a matter of fact a disclaimer as to said attorneys' fees was filed in this cause in the lower court, and said fees have been paid to the parties entitled thereto.

IV.

Can the Foreign Administratrix be Sued in this Case

It is claimed on behalf of the defendants that this suit seeks to compel an accounting from the defendant Curtis in her official capacity as administratrix of the estate of William R. Curtis, deceased; that she is a non-resident of the District of Columbia, receiving her appointment as administratrix of a deceased non-resident from the county court of Clay county, State of Texas; that there is no property, assets, or debts in the District of Columbia due her in her official capacity, and that she cannot be sued as administratrix in said District for any purpose. But counsel misconceive the nature of this suit. No accounting of any character is asked for against the administratrix and no affirmative relief against her is sought. The suit is in its nature a suit *in rem* against the fund in the Treasury, and the claim is made that by operation of law the title to that fund became vested in the trustee in bankruptcy, and that the defendant Curtis obtained no title thereto under her appointment as administratrix, has no title now, and is not entitled to receive the same or any portion thereof. She is made a party to the suit simply because we find her here making claim to the fund and demanding that it be turned over to her. The bill prays that the trustee be decreed to be entitled, as a matter of law, to receive and collect the whole fund on behalf of the creditors of the bankrupt, and it is immaterial to his case whether the administratrix appears in this suit and asserts title in herself or not. There is no conflict in this case between administrators appointed by different courts which would make it necessary to determine which court had jurisdiction over the property and estate of the deceased.

In support of the contention by the defendants that a

foreign administratrix cannot be sued in this jurisdiction the following cases are cited :

Vaughan *vs.* Northup, 15 Peters, 1.
Wyman *vs.* Halstead, 109 U. S., 654.
Estate of Henry Coyt, 3d App. D. C., 246.
King *vs.* United States, 27 Court of Claims, 529.

But upon examination of the facts in those cases it will be found that none of them touch the issue raised in this case. They all turn upon the jurisdiction of the court to appoint an administrator for a non-resident decedent for the sole purpose of collecting funds in this jurisdiction from the Government, or to compel an accounting in this jurisdiction by a foreign administrator of funds already collected by him in his official capacity.

The Wyman case was a suit begun by a mandamus to compel the Treasurer of the United States to pay to Halstead certain drafts issued by the Treasurer to John J. and John N. Pullian, and delivered to Halstead, who thereafter had made application for administration in the District of Columbia on the assets of the two Pullians, who, during their lifetime, were residents of the State of Tennessee, and were domiciled therein at the time of their deaths. The Treasurer refused to pay the drafts unless they were also endorsed by the administrators appointed in the State of Tennessee, the domicile of the two deceased persons. The Supreme Court in its decision said :

"The determination of this case does not depend upon the question whether administration was rightly taken out in the District of Columbia, nor upon the question whether an administrator appointed elsewhere could sue in the District upon debts payable here, but upon the question whether a payment by the United States to an administrator already or hereafter appointed in Tennessee, the domicile of the deceased, would be a good discharge of the debts, payment of which is now sought to be enforced."

After holding that for the purpose of founding administration simple contract debts are assets where the debtor resides, the court quotes the Vaughan and Northup case in 15 Peters, 1, as follows:

"The United States in their sovereign capacity have no particular place of domicile, but possess, in contemplation of law, an ubiquity throughout the Union; and the debts due by them are not to be treated like the debts of a private debtor, which constitute local assets in his own domicile. On the contrary the administrator of a creditor of the Government, duly appointed in the State where he was domiciled at the time of his death, has full authority to receive payment and give a full discharge of the debt due to his intestate, in any place where the Government may choose to pay it."

In Vaughan *vs.* Northup, 15 Peters, 1, an administrator appointed in Kentucky of an inhabitant of that State who died there, intestate and childless received a sum of money from the Treasury of the United States for military services rendered by the intestate during the Revolutionary war, and a bill in equity filed against him in the District of Columbia by one of the next of kin to recover his distributive share of the money so collected was dismissed for want of jurisdiction, the court holding that an administrator appointed in and deriving his authority from one State could not be compelled to account elsewhere in his official capacity for assets lawfully collected by him under and by virtue of his original letters of administration. In that case, as in the Wyman case, it was argued that the assets in the hands of the Government were payable in the District of Columbia, and therefore the probate court had authority to appoint an administrator to collect and administer said assets.

The Coyt case, 3d App. D. C., 246, was an appeal by an administrator from a decree of the supreme court of the District of Columbia holding a probate court, which revoked his letters of administration on the ground that the probate

court was without jurisdiction to grant them, it appearing that the deceased had lived in New York and died there in 1862, and that the application for appointment of an administrator in the District of Columbia was made on behalf of an alleged creditor of the deceased, and the only property of deceased said to have been in this jurisdiction was a claim against the Government of $1,433.33, which sum the creditor desired to collect and administer in this jurisdiction.

In King, administrator, *vs.* United States, 27 Court of Claims, 529, the decedent brought suit in his lifetime in the Court of Claims to recover for the value of certain work done for the Government. After his death the supreme court of the District of Columbia appointed the plaintiff his administrator, and he was permitted to prosecute this suit before the Court of Claims. It appears that the decedent lived and died in Dakota, and no administration on his estate had been applied for in that State.

The defendant moved to strike out the administrator's appearance in this suit, and the court in granting the motion held that where a party domiciled in a State or Territory dies, leaving no assets in the District of Columbia, except a claim against the Government which is in suit, the District court is without jurisdiction to appoint an administrator, because such a claim pending in the Court of Claims, which is not a local but a national court, is not a local asset in the District of Columbia.

That the supreme court of the District of Columbia sitting in equity has ample power to appoint receivers to collect funds due claimants, which funds are held in the Treasury Department awaiting payment to claimants, and to prevent the officials of said Department from disregarding the court's orders by paying the money over to the claimants, is finally determined beyond any doubt by the former decisions of this court and the following cases:

Price *vs.* Forrest, 173 U. S., 410.

U. S. *vs.* Borcherling, 185 U. S., 223.

People's Trust Co. *vs.* U. S., 38 Ct. Claims, 359.

In the People's Trust Company case, which is the latest case on the subject, the court, after reviewing all the prior decisions on the subject, arrived at the following conclusions:

"First. That the object and purpose of section 3477 was to prevent frauds upon the Treasury and not to aid those having claims against the Government to disregard the demands of their creditors.

"Second. That the language of the section does not prevent any court of competent jurisdiction as to the subject-matter and parties from making such orders, not inconsistent therewith, as may be necessary to prevent a creditor of the Government from withdrawing the proceeds of his claim from the reach of his creditors.

"Third. That if such court in any action against such claimant by one of his creditors should, for the protection of the creditor, forbid the claimant from collecting his demand except through a receiver who should hold the proceeds subject to be disposed of according to law under the order of court, such action would not be inconsistent with said section.

"Fourth. That by establishing the Court of Claims the Congress 'created a tribunal to determine the right to receive moneys due by the Government. Such legislation did not leave the Treasury or its officers free to arbitrarily select between conflicting claimants the one to whom payment should be made.'

"Fifth. That a ministerial officer, having no judicial or statutory powers in the premises, in a case wherein the Government is the debtor, cannot arbitrarily, without notice to the legal holder of the claim, pay the money in dispute to such creditor, and that such payment 'could not be successfully pleaded in the Court of Claims as a lawful discharge of the United States.'"

In the case of Price *vs.* Forrest, *supra*, the court, in interpreting section 3477, Revised Statutes, said:

"We perceive nothing in the words or object of the statute that prevents any court of competent jurisdiction as to subject-matter and parties from making such orders as may be necessary or appropriate to prevent one who has a claim

for money against the Government from withdrawing the proceeds of such claim from the reach of his creditors."

See also Borcherling *vs.* U. S., 35 Ct. Claims, 311.

Where a bill is filed to enforce a claim or lien upon a specific fund within reach of the court, and such of the defendants as are neither inhabitants of nor found within the district do not voluntarily appear, the circuit court has jurisdiction to adjudicate upon their rights to, or interest in, the fund, if they be notified of the pendency of the suit by service of publication in the mode prescribed by statute.

Goodman *vs.* Niblack, 102 U. S., 556.

V.

Does the Claim Pass to Trustee in Bankruptcy ?

There can be no question that under the terms of section 70, subhead A, of the bankrupt law of 1898 the claims of William R. Curtis, pending in the Court of Claims at the time he filed his voluntary petition in bankruptcy, passed to and became vested in his trustee in bankruptcy upon his qualification.

Pearson *vs.* United States, 8 Ct. Claims, 543.
Erwin *vs.* United States, 97 U. S., 392.
Comegys *vs.* Vasse, 1 Peters, 193.
Clark *vs.* Clark, 17 How., 315.
Phelps *vs.* McDonald, 99 U. S., 298.
Williams *vs.* Heard, 140 U. S., 529.

The Pearson and Erwin cases arose under the captured and abandoned property act of 1863 (12 Stat., 820), which provided that—

"Any person claiming to have been the owner of any such abandoned or captured property may, at any time within two years after the suppression of the rebellion, refer his claim to the proceeds thereof to the Court of Claims," &c.

In Comegys *vs.* Vasse the Supreme Court held that the right to indemnity under treaty with Spain of February 22, 1819 (8 Stat., 252), for unjust capture of property passed to the underwriter by an abandonment and to the assignee on the bankruptcy of the underwriter under the bankrupt act of April 4, 1800 (2 Stat., 19).

In Clark *vs.* Clark the court held that title to the claim against the Mexican government for unlawful seizure of a cargo or vessel passed to the assignee in bankruptcy of the claimant for the benefit of the creditors.

In the case of Phelps *vs.* McDonald suit was filed in the supreme court of the District of Columbia to restrain the payment to McDonald of $197,190, found to be due him by the joint British and American commission organized under treaty of May 8, 1871, on the ground that said McDonald on his own petition had been declared a bankrupt by the district court of the United States for the southern district of Ohio on December 10, 1868, and that the plaintiff had been appointed his assignee and claimed title to the funds as such. The court said :

"If the thing be assigned the right to collect the proceeds adheres to it, and travels with it, whithersoever the property may go. They are inseparable. Vested rights *ad rem* and *in re*, possibilities coupled with an interest and claims growing out of property, pass to the assignee. The right to indemnity for the unjust capture or destruction of property, whether the wrongdoer be a government or an individual, is clearly within this category. * * * The assignee stood in the place of McDonald and was clothed with all the rights which had belonged to the bankrupt before he became such."

In Williams *vs.* Heard the case of Comegys *vs.* Vasse was followed and applied to the awards of the Alabama Claims Commission. The United States had demanded and received indemnity for losses sustained by their citizens, and had recognized as valid the class of claims to which the par-

ticular claim belonged, and had created a court to adjudicate thereon. It was held that the claim passed to the assignee in bankruptcy, and that payment of awards so made could not be regarded as a mere gratuity.

VI.

Relief Granted under Indian Depredation Law Not Intended as a Bounty or Gratuity.

It is claimed, however, on behalf of the defendants that by reason of the peculiar provisions of section 9 of the Indian depredation law a claim arising under that act is not only not assignable, but is to be considered in the nature of a bounty or gratuity in favor of the claimant, his heirs or personal representatives, to the exclusion of the rights of creditors of the original claimant.

That section reads as follows:

"SEC. 9. That all sales, transfers or assignments of any such claims heretofore or hereafter made, except such as have occurred in the due administration of decedents' estates and all contracts heretofore made for fees and allowances to claimants' attorneys, are hereby declared void, and all warrants issued by the Secretary of the Treasury, in payment of such judgment, shall be made payable and delivered only to the claimant or his lawful heirs, executors or administrators or transferees under administrative proceedings, except so much thereof as shall be allowed the claimant's attorneys by the court for prosecuting said claim, which may be paid direct to such attorneys, and the allowances to the claimant's attorneys shall be regulated and fixed by the court at the time of rendering judgment in each case and entered of record as part of the findings thereof; but in no case shall the allowance exceed 15 per cent. of the judgment recovered, except in case of claims of less amount than $500, or where unusual services have been rendered or expenses incurred by the claimant's attorney, in which case not to exceed 20 per cent. of such judgment shall be allowed by the court."

An examination of the whole act, we think, will be sufficient to dispose of this contention. The act is dated March 3, 1891 (26 Stat., 851), and is entitled "An act to provide for the adjudication and payment of claims arising from Indian depredations." The act provides that all claims then pending under various treaties with the Indian tribes before the Department of the Interior should be transferred to the Court of Claims for adjudication, and all claims thereafter filed should be prosecuted in the Court of Claims against the United States and the Indian tribe alleged to have committed the depredation.

It confers jurisdiction upon the Court of Claims over "all claims for property of citizens of the United States taken or destroyed by Indians, &c.;" that claims shall be presented by petition setting forth the facts, and, among other things, "the persons, classes of persons, tribe or tribes, or band of Indians by whom the alleged illegal acts were committed," &c.; that the Attorney General shall appear and plead on behalf of the United States and the defendant Indians, and shall "file a notice of any counterclaim, set-off, claim for damages, demand, or defense whatsoever" of either defendants, and that the Indian defendants may also employ their own attorney if they see fit; that "the amount of any judgment rendered against any tribe of Indians shall be charged against the tribe by which, or by members of which, the court shall find that the depredation was committed, and shall be deducted and paid" out of the funds of said Indian tribe in the manner specifically set out in section 6 of said act.

This law has been many times before the Supreme Court of the United States and the Court of Claims for construction, and although the question as to whether the act was intended to create a bounty or gratuity because of the provisions of the ninth section thereof was not directly determined by the Supreme Court, yet, in at least two cases, that court carefully considered the act, section by section,

and nowhere intimated that the relief granted was intended as a gratuity. On the contrary, all of the decisions on this act bear out the construction that the law was intended to compel the Indians to make restitution out of their own funds for property of citizens of the United States which they had illegally seized and appropriated to their own use.

Gorham *vs.* U. S., 165 U. S., 316.
U. S. *vs.* Martinez, 195 U. S., 469.
Leighton *vs.* U. S., 161 U. S., 291.
U. S. *vs.* Northwestern Express, Storage and Trans. Co., 164 U. S., 686.

In the Gorham case the court said:

"The scheme of the act is to provide payment to the citizen for property destroyed under the circumstances stated in the first section, and where the Indians can be identified, to make them, through the funds coming to them from the Government, pay back to it the amount it pays by reason of the property so destroyed."

The last case above noted in 164 U. S., 686, would seem to be decisive of the question. In that case a stage-coach company, a corporation, was held to be a "citizen of the United States" within the meaning of the act and entitled to the benefit of its provisions. The court said:

"The act in question was a provision made by the United States as the guardian of the Indians, controlling as well their persons as their property, designed to make provision for the payment of the injuries committed by its wards. It certainly contemplated that citizens of the United States, even strictly speaking, should be made whole for the losses they might have sustained. But it is evident that cases might arise where, in order to make restitution to citizens of the United States, the term in question would require a construction embracing Federal and State corporations. For, as the legal title to the property of a corporation is generally in the corporation, claims for damages to such

property could not be presented in the names of the several stockholders. To deny relief to such corporation would be practically therefore to refuse redress to citizens of the United States."

The Court of Claims has also passed upon this act many times, and we find one case, McKinzie *vs.* U. S. *et al.*, 34 Court of Claims Rep., 278, where the court expressly held that the act of 1891 did not intend to exclude the rights of creditors, and that the claims when appropriated for were not gratuities. The court said:

"If Congress had meant to exclude these claims from the general principle applicable to all claims for money, it would have said so in terms. But they have not done so by anything appearing in the early statutes upon which the claims are founded or in the jurisdictional statute, which opened the doors of this court for their adjudication as legal demands. The ninth section of the act of 1891 provides that all sales, transfers, or assignments of depredation claims, except such as have occurred in due administration of decedents' estates, shall be void, and that all warrants in payment of judgments on such claims shall be made payable and delivered only to the claimant or his lawful heirs, executors, or administrators, or transferee under administrative proceeding. This statute is merely declaratory of the common law with respect to the assignability of choses in action, one of the qualities of a chose in action at common law being that it is not assignable, although in equity courts have viewed the assignment of a chose in action for a valuable consideration as a contract by the assignor to permit the assignee to use his name for the purpose of recovery. There is nothing, however, in this statute to exclude creditors. Thus to hold would exclude by implication the right of the surviving partner to collect and pay himself an indebtedness which arose in the course of his partnership dealings with the property, which, being taken, became a claim against the defendant Indians."

So in the case of Labadie, administrator, *vs.* U. S. *et al.*, 31 Court of Claims Rep., 436, the United States was allowed to

file a plea of set-off against one member of the partnership in whose favor a finding had been made.

For other cases construing the Indian depredation act of 1891 see—

Brown *vs.* U. S., 32 Ct. Cl. Rep., 432.
Leighton *vs.* U. S., 29 Ct. Cl. Rep., 288.
Affirmed in 161 U. S., 291.
Love *vs.* U. S., 29 Ct. Cl. Rep., 332.
Wolverton's case, 29 Ct. Cl., 107.
Graham *vs.* U. S., 30 Ct. Cl., 318.

When it is recalled that executors and administrators represent the creditors of an estate to whom they are accountable before the court from which they received their authority, it is readily to be seen that, even if Congress had any such intention as is attributed to it by counsel for the defendants, the language used in section 9 of the act utterly fails to effectuate that intention, and the only question to be determined is, which of the representatives of the creditors, the trustee or the administratrix, is entitled to distribute the fund. We submit that under the decisions there can be no doubt of the fact that the title to the claims in suit passed to the trustee in bankruptcy.

VII.

Difference Between This Law and Law Relating to French Spoliation Claims.

It was contended in the court below by defendants that the relief granted by the Indian depredation law was similar to the relief granted in the French spoliation cases which had been declared by the Supreme Court in Blagge *vs.* Balch, 162 U. S., 454, to be in the nature of gratuities. But not only do these claims stand upon a different footing,

but the laws relating to each are entirely different in their provisions. The payment of the French spoliation claims to the next of kin rests upon a proviso in the act of March 3, 1891 (26 Stat., 908), which proviso contains an express limitation in favor of the next of kin instead of assignees in bankruptcy. This proviso was held in Blagge *vs.* Balch to exclude creditors, legatees, assignees, and all strangers to the blood. But in these claims the Court of Claims could not render judgment, and Congress reserved the final determination in regard to them for future consideration as to their payment. The payments contemplated were purposely brought within the category of payments by Congress by way of gratuity and grace and not of right. An instructive decision on this subject was rendered by the late Justice Cox in

Gardner *vs.* Clarke, 20 D. C., 261.

A comparison between the wording of the ninth section of the Indian depredation law and the proviso to the act providing for the payment of French spoliation claims, *both of which were passed on the same day*, should be sufficient, we think, to decide the question under discussion. Congress plainly indicated, by express language, its intention to exclude creditors of claimants from participating in the benefits derived from French spoliation claims, notwithstanding the recommendations of the Court of Claims to the contrary, yet when they came to pass the Indian depredation law on the same day they used entirely different language, which does not in express terms exclude creditors from its benefits and does not by necessary implication accomplish that end.

It is submitted that having this very question before them at that time, and carefully making provision that the donation should go to next of kin in the one case, and not making any such provision in the other case, indicates clearly that it was not the intention of Congress to exclude creditors from the

benefits of the Indian act and to nullify assignments by operation of law of claims originating under that act. The ninth section of that act was intended solely to protect the claimants or their personal representatives from improvident sales or assignments made by themselves or from exorbitant contracts for fees which they might have been forced into signing by attorneys prosecuting their claims.

Respectfully submitted.

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IN THE

Court of Appeals, District of Columbia.

APRIL TERM, 1905.

No. 1551.

MORGAN BRYAN, TRUSTEE IN BANKRUPTCY, APPELLANT,

v.

ALICE V. CURTIS, ADMINISTRATRIX OF THE ESTATE OF WILLIAM R. CURTIS, DECEASED, AND LESLIE M. SHAW, SECRETARY OF THE TREASURY.

BRIEF FOR THE APPELLEE LESLIE M. SHAW.

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STATEMENT.

This appeal is from an order sustaining a demurrer of the Secretary of the Treasury to the bill of complaint filed by appellant, as trustee in bankruptcy of one William R. Curtis, to restrain the payment by the Secretary of the Treasury to Alice V. Curtis, administratrix of the estate of said William R. Curtis, of certain judgments awarded her by the Court of Claims under the Indian depredation act, the appellant claiming that the judgments belong to him as such trustee in bankruptcy.

The Indian depredation act was passed March 3, 1891, (26 Stat., 854). In August, 1893, William R. Curtis filed in the Court of Claims two suits under this act. In 1899 Curtis was declared a bankrupt by the United States district court for the northern district of Texas, and the appellant was appointed his trustee. Shortly afterwards Curtis died, and his widow, the appellee Alice V. Curtis, was appointed administratrix of his estate by the proper court of his domicile in Texas. Mrs. Curtis was substituted as claimant in the cases pending in the Court of Claims, and on April 7, 1904, judgments were entered in her favor for $4,307.50 and $2,800, less certain attorney's fees.

The appellant had already notified the Court of Claims of his appointment as trustee in bankruptcy, and after the judgments were entered he petitioned the court to substitute him in the place of the administratrix, but his petition was denied without prejudice to his right to sue in a court having jurisdiction of the parties and the subject-matter.

Appropriation for said judgments having been made by the act of April 27, 1904 (33 Stat., 423), on May 31, 1904, appellant filed his bill in the court below, asserting title in himself to the moneys so appropriated and praying for an injunction, and by an amended bill asking for the appointment of a receiver. Upon the filing of the bill an order was passed temporarily restraining Mrs. Curtis from receiving the money and requiring the Secretary of the Treasury to show cause why he should not be enjoined from paying it over.

Various proceedings were had in the court below, including an order discharging the rule to show cause and declining to appoint a receiver, but the only order pertinent here is that appealed from, sustaining the demurrer of the Secretary of the Treasury to the amended bill, the court below being of the opinion that claims under the Indian depredation act did not pass to the trustee in bankruptcy.

ARGUMENT.

The order appealed from is correct, for two reasons:

1. An administratrix appointed by a court of another jurisdiction is not amenable to suit in the District of Columbia.

2. A claim against the United States under the Indian depredation act is not assignable in bankruptcy, but passes only in administration proceedings.

I.

The appellee Alice V. Curtis, as administratrix of William R. Curtis, appointed by the proper court of the domicile of the decedent in Texas, is not liable to suit here.

The appellant, instead of filing his bill in the proper court of Texas, where both he and the appellee Curtis resided, saw fit to sue here. Mrs. Curtis was, of course, not served with process, and he published against her. She has appeared specially for the sole purpose of moving that the attempted service by publication be set aside.

The Supreme Court of the United States has conclusively determined that such an administratrix is not liable to suit here, even should she be physically within the District and actually served with process.

This was the decision in Vaughan *v.* Northrup, 15 Pet., 1, 5. In that case one Moody resided and died in Kentucky; Northrup took out letters of administration in that State, and by virtue of his letters received from the Treasurer of the United States a large sum of money due Moody. The

complainants, claiming to be the next of kin of Moody, filed a bill in this District against Northrup, who happened to be found here, for an account and distribution of the personal estate. The old circuit court dismissed the bill for want of jurisdiction, and in affirming that judgment the Supreme Court, through Mr. Justice Story, said:

> "Under these circumstances, the question is broadly presented whether an administrator, appointed and deriving his authority from another State, is liable to be sued here in his official character, for assets lawfully received by him under and in virtue of his original letters of administration. We are of opinion, both upon principle and authority, that he is not. Every grant of administration is strictly confined in its authority and operation to the limits of the territory of the government which grants it; and does not, *de jure*, extend to other countries. It cannot confer, as a matter of right, any authority to collect assets of the deceased in any other State; and whatever operation is allowed to it beyond the original territory of the grant is a mere matter of comity, which every nation is at liberty to yield or to withhold, according to its own policy and pleasure, with reference to its own institutions and the interests of its own citizens. On the other hand, the administrator is exclusively bound to account for all the assets which he receives under and in virtue of his administration to the proper tribunals of the government from which he derives his authority; and the tribunals of other States have no right to interfere with or to control the application of those assets according to the *lex loci*. Hence, it has become an established doctrine that an administrator, appointed in one State, cannot, in his official capacity, sue for any debts due to his intestate in the courts of another State; and that he is not liable to be sued in that capacity in the courts of the latter, by any creditor, for any debts due there by his intestate. The authorities to this effect are exceedingly numerous, both in England and America; but it seems to us unnecessary, in the present state of the law, to do more than

> to refer to the leading principle as recognized by this court in Fenwick *v.* Sears, 1 Cranch, 259; Dixon's Executors *v.* Ramsay's Executors, 3 Cranch, 319; and Kerr *v.* Moon, 9 Wheat., 565."

Counsel for the appellant endeavor to distinguish the case at bar upon the ground that it is not a suit against an administratrix for assets of the estate, but that its object is to establish that certain funds claimed by the administratrix are not assets of the estate, but that the title to them passed to the appellant from the decedent before the latter's death.

This attempted distinction is fully answered by the decision of the Supreme Court in Wyman *v.* Halstead, 109 U. S., 654. Wyman, who was Treasurer of the United States in 1882, after appropriations by Congress, drew three drafts, one payable to John J. Pulliam, executor of John N. Pulliam, and the others payable to John J. Pulliam, and delivered them to Halstead as attorney for Pulliam. Pulliam died before endorsing the drafts, and Halstead obtained letters of administration on both estates from the orphans' court here. Administrators were also appointed by the courts of Tennessee, where the Pulliams resided. Thereupon one Keyser filed a bill here claiming an equitable interest in the drafts. Halstead answered the bill, a decree *pro confesso* was had against the Tennessee administrator of John N. Pulliam, and a decree was passed appointing Halstead trustee to endorse and collect the drafts. Wyman refusing to pay the drafts upon his endorsement, Halstead obtained a writ of mandamus from the supreme court of the District commanding him to pay them. This judgment was reversed by the Supreme Court, it holding that Wyman might in his discretion pay the drafts to the Tennessee administrators.

It is apparent that the precise question here under discussion was involved in that case, the only difference being that Keyser claimed a portion of the debt, while the

appellant claims it all. Upon this point the Supreme Court said :

> " It is hardly necessary to mention the proceedings in equity upon the suit of Keyser. Though referred to in the petition for the writ of mandamus in the general terms stated at the beginning of this opinion, they have not been printed in full in the record, as required by the eighth rule. The reason doubtless is, that both in the opinion of the court below and in the argument in this court, while it is said that the administrator appointed in Tennessee of the estate of John N. Pulliam was made a defendant in that suit, and the bill taken for confessed against him, it is admitted that he was not amenable as administrator to suit in this District, and that neither he, nor any administrator hereafter appointed in Tennessee of the estate of John N. Pulliam could be concluded by that decree " (p. 659).

See 2 Mackey, 368, 391, for the opinion of Judge Hagner upon this point.

Nor does section 329 of the Code, authorizing foreign administrators to sue in this District, affect the question. This section is substantially the same as the act of June 24, 1812, referred to in Vaughan *v.* Northrup, *supra,* which statute, it was held in that case, did not authorize a suit here against a foreign administrator.

II.

The claims of William R. Curtis against the United States under the Indian depredation act passed to his administratrix and not to his trustee in bankruptcy.

The decision of this question depends entirely upon the proper construction of the language of the act. The act, which was approved March 3, 1891 (26 Stat., 854), confers jurisdiction upon the Court of Claims to inquire into and finally adjudicate claims for property of citizens of the

United States taken or destroyed by Indians belonging to any band or tribe in amity with the United States.

Section 3 of the act provides that claims shall be presented by petition, which shall be verified by the affidavit "of the claimant, his agent, administrator or attorney."

Section 9, or so much as is pertinent, is as follows:

> "That all sales, transfers or assignments of any such claims heretofore or hereafter made, except such as have occurred in the due administration of decedents' estates and all contracts heretofore made for fees and allowances to claimants' attorneys, are hereby declared void, and all warrants issued by the Secretary of the Treasury in payment of such judgment shall be made payable and delivered only to the claimant or his lawful heirs, executors or administrators or transferee under administrative proceedings, except so much thereof as shall be allowed to the claimant's attorneys," etc.

It cannot be said that the passage of this act was the recognition by Congress of any legal obligation on the part of the United States to pay claims of the character described therein.

> Labadie, adm'r, *v.* U. S., 32 Ct. Claims, 368; 33 Ct. Claims, 476.

It was rather the result of long-continued and persistent efforts on the part of western Congressmen and persons directly interested, and amounted in law to no more than a gratuity to certain citizens of the United States who had, presumptively, been instrumental in the building up of its western domain to recompense them for losses inflicted on them through no fault of their own by hostile Indians.

It cannot be gainsaid, under such circumstances, that Congress has the right to direct to whom its gift shall go and to provide that it shall go only to the original claimant or to his heirs or next of kin and not to his creditors; nor is it for the court to inquire the reason for such a provision

of the law, for instance, whether the property destroyed was exempt from execution. The sole question for the court to determine is the intention of the legislature.

Looking at the statute in the light of this cardinal principle of interpretation, we think it is plain that Congress meant that the claims adjudicated under this act should go only to the claimant himself or to his heir or next of kin, and not to his creditors.

Counsel for appellant argued below, and will no doubt urge upon this court, that section 9 of the act of March 3, 1891, like section 3477, R. S. U. S., is not applicable to transfers of claims by operation of law.

The material part of that section is as follows:

> "*All* transfers and assignments made of any claim upon the United States, or of any part or share thereof or interest therein * * * shall be absolutely null and void, unless they are freely made * * * after the allowance of such a claim," etc.

It is true that in a line of decision, beginning with Erwin *v.* U. S., 97 U. S., 392, and coming down to United States *v.* Borcherling, 185 U. S., 223, the Supreme Court has held that assignments by operation of law are not within the prohibition of this section, for the reason that, in the opinion of the Supreme Court, such was not the intention of Congress. In Goodman *v.* Niblack, 102 U. S., 556, the court says on this point (p. 560):

> "The language of the statute, 'all transfers and assignments of any claim upon the United States, or of any part thereof, or any interest therein,' is broad enough (*if such were the purpose of Congress*) to include transfers by operation of law, or by will."

Upon comparison it will be seen that the language of the two statutes differs essentially. Section 3477 provides that *all* transfers shall be void, while section 9 declares that all transfers with one exception shall be void.

> "'*Expressio unius est exclusio alterius*' is an universal maxim in the construction of statutes."
> U. S. *v.* Arredondo, 6 Pet., 691, 725.

In Arthur *v.* Cumming, 91 U. S., 362, it is said this maxim applies "with cogent effect" to a statute providing that "on *all* burlaps * * * except such as may be suitable for bagging" a certain duty should be paid.

See also—

Walla Walla *v.* Walla Walla Water Co., 172 U. S., 22.
1 Fed. Ann. Stat., LXIX.

Applying this maxim, and remembering that the act of 1891 was passed after many of the decisions construing section 3477, it is plain, we think, that Congress, by expressly excepting from the inhibition of the statute one class of transfers, intended to include all others.

That this construction is correct is conclusively shown by the further provision of section 9, not to be found in section 3477, that all warrants issued in payment of judgments

> "shall be made payable and delivered only to the claimant or his lawful heirs, executors or administrators or transferee in administrative proceedings."

The language of this statute brings the case within the decisions of the Supreme Court in Emerson *v.* Hall, 13 Pet., 409, and Blagge *v.* Balch, 162 U. S., 439.

In the former case Emerson, Chew, and Lorain, customs officers at New Orleans, seized and procured the forfeiture of a brig for violating the slave laws, but under the law then in force these officers were held not entitled to any of the proceeds of the prize. After the death of Emerson and Lorain, Congress passed an act directing that one-half of such proceeds be paid "to the said Beverly Chew and the legal representatives of" the others. A dispute arose between the heirs and creditors of Emerson, both claiming his share. The Supreme Court held that it was the intention

of Congress to give the money to the heirs, saying at page 413:

> "A claim having no foundation in law, but depending entirely on the generosity of the Government, constitutes no basis for the action of any legal principle. It cannot be assigned. It does not go to the administrator as assets. It does not descend to the heir. And if the Government, from motives of public policy, or any other considerations, shall think proper, under such circumstances, to make a grant of money to the heirs of the claimant, they receive it as a gift or pure donation. A donation made, it is true, in reference to some meritorious act of their ancestor, but which did not constitute a matter of right against the Government."

The case of Blagge *v.* Balch, 162 U. S., 439, involved the construction of the French spoliation act passed March 3, 1891. The French spoliation claims arose from depredations committed upon our commerce by French cruisers. In the negotiations leading up to the treaty of 1800 these claims were presented to France, and the sufferers from these spoliations have contended that by that treaty, in which each country mutually renounced all claims for indemnity, the obligation to indemnify them was transferred from France to the United States.

By the act of January 20, 1885, Congress authorized the Court of Claims to decide upon the validity of these claims and to report to Congress their conclusions of fact and law, which were not, however, to be binding. The court reported to Congress that the treaty raised an obligation under the Constitution on the part of the United States to compensate the individual sufferers for their losses. Thereupon, on March 3, 1891, Congress passed an act making appropriations to pay certain claims, but provided:

> "That in all cases where the original sufferers were adjudicated bankrupts the awards shall be made on behalf of the next of kin instead of to assignees in

bankruptcy, and the awards in the cases of individual claimants shall not be paid until the Court of Claims shall certify to the Secretary of the Treasury that the personal representatives on whose behalf the award is made represent the next of kin," etc.

The court said, through Mr. Chief Justice Fuller:

"Notwithstanding repeated attempts at legislation, acts in two instances being defeated by the interposition of a veto, no bill had become a law, during more than eighty years, which recognized an obligation to indemnify, arising from the treaty of 1800, and the history of the controversy shows that there was a difference of opinion as to the effect of that treaty. * * * Under the act of January 20, 1885, the claims were allowed to be brought before the Court of Claims, but that court was not permitted to go to judgment. The legislative department reserved the final determination in regard to them to itself, and carefully guarded against any committal of the United States to their payment. And by the act of March 3, 1891, payment was only to be made according to the proviso. We think that payments thus prescribed to be made were purposely brought within the category of payments by way of gratuity, payments as of grace and not of right. * * *

"Manifestly the claims involved in these cases do not come within the rule laid down in Comegys *v.* Vasse and Heard *v.* Williams, and, without intimating any opinion on their merits, the legislation seems to us plainly to place them within that applied in Emerson's Heirs *v.* Hall, though the circumstances are not the same.

"The first clause of the proviso relates to cases where the original sufferers were adjudicated bankrupts, and specifically requires the awards to be 'made on behalf of the next of kin instead of the assignees in bankruptcy.' As we have seen, the Court of Claims had informed Congress that their view was that the action of the United States came within the constitutional provision as to the taking of private property for public use, and hence that

> Congress was bound to pay the claimants what was due them by reason of such taking, and further that they had accordingly made awards in favor of assignees in bankruptcy. But Congress declined to accept the views of the Court of Claims and to treat these claims as property of the original claimants, transferable and transmissible like other property of the nature of choses in action, and expressly provided that the awards should be made to the next of kin instead of the assignees in bankruptcy. * * *
>
> "It appears to us that Congress intended that the next of kin should be the beneficiaries in every case; that the limitation is express; and that creditors, legatees and assignees, all strangers to the blood, are excluded."

Appellant's counsel cite several cases in which the Supreme Court held that the particular claim in controversy passed in bankruptcy. All of these cases differ from the one at bar in two important points:

First. In each of them the claim was for property taken or destroyed by the United States itself or by a foreign government. A payment of such a claim could not, of course, be called a gift.

Second. An examination of the statutes and treaties involved in those cases fails to disclose in any case any prohibition of assignments such as we have here, so that, as said by the Supreme Court in Blagge *v.* Balch, irrespective of the propriety of the action of Congress, the *language* of the statute here places these claims in the category of gratuities.

Apparently counsel for appellant have made an exhaustive search of the books for cases construing the Indian depredation act, and many decisions, both of the Supreme Court and of the Court of Claims, are cited by them. Upon an examination of these cases, however, it is found that only two of them at all touch the present question. In the first

of these cases, Labadie, adm'r, *v.* U. S., 31 Ct. Cl., 436, while the point is mentioned, the court refuses to decide it. The other case, McKinzie *v.* U. S., 34 Ct. Cl., 278, is strongly relied on by appellant and would seem to support his construction of the statute.

But if the McKinzie case be the law, the question under discussion is a thing adjudicated as to the appellant. It will be remembered that the judgments were awarded by the Court of Claims to the appellee Mrs. Curtis; that Congress appropriated the money in her name, and that the Court of Claims refused to grant the appellant any relief. If the Court of Claims had the power to decide upon the dispute between the trustee and the administratrix, it has decided in favor of the latter, and the trustee is bound by the decision.

On the other hand, if the Court of Claims had not the power to decide this dispute, a decision by it of a similar question in a prior case furnishes no precedent.

But the fact is the Court of Claims is without jurisdiction, as it has held in these very cases, to decide a dispute between the next of kin and the creditors.

The Court of Claims is a special tribunal of limited jurisdiction. It is well settled that when the law has given a special tribunal authority to hear and determine certain matters the decision of that tribunal within the scope of its authority is final; or, to apply the rule, the decision of the Court of Claims is conclusive of the validity and amount of the claim, but not of the person to whom the claim is due.

In Buchanan *v.* Patterson, 190 U. S., 363, the rule is applied to a judgment of the Court of Claims under the French spoliation act.

In Comegys *v.* Vasse, 1 Pet., 193, and Williams *v.* Heard, 140 U. S., 529, it is applied to judgments of special tribunals created by Congress, and in the latter case it is said that the judgment in favor of, and the appropriation to, a certain person simply identifies the claim.

See also Johnson *v.* Towsley, 13 Wall., 72.

In this view of the jurisdiction of the Court of Claims the McKinzie case is of no value.

And upon an examination of reasoning of the McKinzie case, together with prior judgments of the same court, we think that decision will not commend itself to the judgment of this court.

McKinzie, as surviving partner, filed a petition claiming the whole amount involved, and petitions were also filed by two administrators, appointed in different jurisdictions, of the estate of the deceased partner. The court dismissed the petitions of the administrators, and awarded judgment to McKinzie on the common-law rule that upon the death of one partner the legal title to the firm's assets passed to the survivor.

In the opinion of the majority of the court it was said that there was nothing in the statute to exclude creditors from sharing in awards, and that the language of the act declaring that all assignments, with one exception, should be void was "merely declaratory of the common law with respect to the assignability of choses in action." While the judgment was in favor of the surviving partner, he was compelled to give bond for the protection of the estate of his deceased partner, so that there was no substantial difference between such a judgment and one in favor of each partner for his share.

The opinion of the majority of the court, however, is quite remarkable; remarkable, in the first place, in ignoring two earlier and contrary decisions of the same court upon the same subject; and remarkable, in the second place, in assuming that Congress in section 9 of the act casually mentioned, apparently as a matter purely of historical interest, an ancient doctrine of the common law long obsolete and never in force in this country. In other words, the court says that the express statement by Congress that transfers of claims to be prosecuted under the act are void merely declares the old common law, but has no effect upon

proceedings under the statute; no other reason is given by the court for disregarding the plain language of the statute.

It is true that the old common-law doctrine was that the assignment of a chose in action was void, but this doctrine was never accepted in equity and was soon rejected in the law courts themselves, those courts permitting suit to be brought in the name of the assignor.

Schouler on Personal Prop., secs. 72 *et seq*.

This was the law in this District at the time of the passage of the Indian depredation act, and had been many times declared by the Supreme Court.

Hayward *v.* Andrews, 106 U. S., 672, 675.

N. Y., etc., Co. *v.* Memphis Water Co., 107 U. S., 205, 214.

Glenn *v.* Marbury, 145 U. S., 499.

It is plain, therefore, that the language of this statute did not declare the common law as it existed in 1891.

What object did Congress have in making this declaration? Was it simply an exhibition of vanity on the part of the framers of this statute to display their knowledge of the history of the law, or did Congress intend this language to mean something? Did it intend to revive this ancient principle of the common law and make it applicable to this particular class of choses in action? There can be but one answer to these questions. At common law a creditor had no interest in his debtor's chose in action for the reason that it could not be voluntarily assigned to him and could not be reached against the wishes of the debtor. So Congress, by reviving this principle of the common law as to this class of cases, intended to and did put all such claims beyond the reach of creditors.

Such was the conclusion reached by Mr. Chief Justice Nott in his dissenting opinion in the McKinzie case, in the course of which he said :

"The only right of action which the partnership had was a suit against the individual depredators. The act of 1891 gave a right of action against the tribe and against the Government which had never existed before; and it assumed a liability on the part of the United States which was then created by its own terms. It was the right of Congress to determine how and to whom the money recovered under the act should go; and no one who studies the provisions enacted can doubt that it is to go, not to creditors or assignees, but to the original sufferers and their heirs or next of kin. No other persons are directly or indirectly recognized as beneficiaries under the act. The Supreme Court went further in holding the French spoliation claims to be gratuities; for there, the Government had taken the choses in action of its citizens, their demands against a foreign power, and paid them away to France in consideration of the relinquishment of French claims against the United States (pp. 287, 288).

In the earlier case of Labadie, adm'r, *v.* U. S., 32 Ct. Claims, 368, 378, the administrator of the surviving partner sued for the whole claim, while the administrator of the partner who first died sued for his intestate's share. To the petition of the administrator (Labadie) of the surviving partner the United States pleaded set-off in a sum greater than the total claim. The court overruled a demurrer to this plea, but expressly provided that the set-off should not extend beyond the interest of Labadie's intestate. In its unanimous opinion the court said upon the present question:

> "In these Indian depredation cases there is no obligation known to the law as a debt. The obligation, such as it is, is created by the statutes. From a legal point of view the claims rest on a promise, an assurance, a moral obligation, but nevertheless they are not demands or choses in action known to the law, and consequently fall within the classification of gratuities. In giving a legal character, a validity to such claims, Congress may impose conditions and

> give preferences and make exclusions. The widow may be preferred to the children, the children to the assignee in bankruptcy, and creditors may be wholly excluded from the benefits of a statute. In this instance the statute, not in express terms, but by necessary implication, does exclude assignees and creditors, for it provides that payments shall be made 'only to the claimant or his lawful heirs, executors, or administrators, or transferee under administrative proceedings.' By 'heirs' the court understands his widow and next of kin. That is to say, if a claimant be dead, payment be made to his widow and children without the interposition of a legal representative. Whether they can maintain an action in this court without the appointment of an executor or an administrator is a question not before the court. It is enough to say that Congress have dealt with these claims in a manner differing materially from the strict rule of the common law."

Upon a rehearing of the same case, 33 Court Claims, 479, the court emphatically repeated its views as follows:

> "The liability which treaties and statutes create must of course be limited by their terms. The Government may undertake to pay one man and not another; it may undertake to pay all that property was worth or only a fixed percentage of its value; it may limit its liability to the original sufferer or recognize survivorship in his widow or children or legal representatives; it may, through the ordinary ministers of the law—executors, administrators, surviving partners, receivers, assignees in bankruptcy—recognize creditors as beneficiaries; but it cannot be compelled to assume an unrestricted liability which shall pass as ordinary property passes.
>
> "In none of the statutes relating to Indian depredations are creditors recognized as possessing rights. Under the Indian depredation act of 1891, they are practically excluded from obtaining payment by the terms of the ninth section. Assignments are declared void, and *it is clear that the statute does not contemplate suits by receivers or assignees in bankruptcy.* In a word, a creditor cannot come into court, directly or indi-

> rectly, and oust one who has suffered by Indian depredations and take his place and recover accordingly."

The appellant cites the decision of this court in Roberts *v.* Consaul, 33 Wash. Law Rep., 98, as decisive, so far as the Secretary of the Treasury is concerned, of all the questions presented here.

The demurrer in this case was filed before that decision, and we have not undertaken to re-argue the points actually decided in that case. But the questions which we have discussed were not before the court there.

Nor is there any good reason why the Secretary of the Treasury should not present these questions. He is a public officer, sworn to perform certain duties, and in this case there has been imposed upon him by statute the specific duty of paying certain money to one Alice V. Curtis, administratrix. If our first point be well taken and Mrs. Curtis is exempt from suit in this District, a payment to any one else, even though upon the order of a court of this District, would not relieve the United States from this indebtedness, but both the Government and the Secretary personally would be liable to another suit for the money. Mrs. Curtis has already manifested her intention of making this point, so that it must be decided now.

And the Secretary of the Treasury is surely entitled to present to the court, in a case in which he is a defendant and in which the point is necessarily involved, the question of the construction of the statute, and to take the opinion of the court thereon.

We respectfully submit that the construction given the statute by the court below is correct, and that the decree must be affirmed.

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